IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 780 of 1986

Date of Decision: 15-06-2005

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

BAI CHEHOR WD/O MAGANJI LAKHAJI , DELETED & 5 – Respondent(s)

(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice
The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant(s):
MR MD PANDYA ,Adv.

For the Respondent(s):
MR PK JANI for Respondent No(s).: 1 - 1.
NOTICE SERVED for Respondent No(s).: 2, 3,4.
MR RR MARSHALL for Respondent No(s).: 5.

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

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Whether reporters of Local Papers may be allowed to see the Judgment?

1.Through this Appeal, judgment of Motor Accident Claims Tribunal (Main), Mehsana, MACP No.410 of 1982 dated 3.10.1985, is challenged.

2. Accident took place on 30.4.1982 at about 11:00 a.m. Claimant (deceased), succeeded by legal heirs, was moving by Tractor No.GTF-6889 with Trailer No.GTF-7995. He was cleaner/ labourer in this vehicle. S.T.bus No.GTS-8379 came at full speed from Mehsana side driven rashly and negligently, hit the tractor-cum-trailer resulting in the accident and serious injuries to the claimant. He was shifted to Civil Hospital, Mehsana, thereafter to Civil Hospital, Ahmedabad. For the injuries suffered, claim for Rs.1,10,000/- was made. During the pendency of the claim, claimant died on 4.5.1983, therefore, succeeded by present claimants. Claim has been resisted by all the opponents. Taking place of accident is denied, so also, sustaining of injuries by the claimant on various parts of the body. It is also denied that bus was being driven rashly and

negligently causing the accident. The fact that claimant was working as cleaner/labourer is also disputed, so also his income. Claim is stated to be excessive. In substance, all the averments taken by the claimant have been disputed and submissions are for rejection of the claim.

3. Questions which were for consideration were liability for taking place of accident, extent thereof and amount of compensation payable for the injuries suffered. From evidence, Claims Tribunal found that accident had taken place and claimant suffered injuries while traveling in the tractor-trolley. It is also found that the claimant was treated for the injuries suffered for about five months and he died in a year's time and the conclusion drawn is that there was connection between the injuries suffered and the death of the deceased. On crucial question as to responsibility for the accident, Tribunal records that it was 12.5 feet narrow road, bus was being driven on extreme left side, even one left side tyre of it was on kutchha portion of the road, demonstrating that the bus was being driven on

extreme left side of the road. Still, Tribunal holds that since the bus was being driven, therefore, it was also liable to the extent of thirty per cent. It is this finding which is questionable. When conclusion is that bus was being driven on extreme left portion of the road and even one left side tyre was on kutchha portion of road, negligence or rashness on the part of bus driver is eliminated. Further, bus driver has also said that on seeing the tractor coming form the opposite direction, he stopped the bus on the left side. This statement has not been rebutted through cross-examination or other reliable evidence. Therefore, finding that bus driver was thirty per cent negligent is erroneous, therefore, set aside. Evidence clearly points out that tractor-cum-trailer driver was negligent in driving the vehicle, therefore, accident took place and claimant suffered serious injuries. Having come to the aforesaid conclusion, determination of compensation cannot be said to be excessive. Serious injuries have been suffered by the claimant in this accident, described by medical certificate, recorded in para-11 of the award.

He took treatment for more than five months, spent on medicines, transportation and other items of expenditures associated with treatment. He developed paralysis because of the injuries and looking to the seriousness of injuries, it can be safely concluded that he died in a year's time on account of this. Contention to the contrary is liable to be rejected. Similarly, heirs are entitled for compensation awardable to the deceased for the injuries suffered by him. Deceased was earning Rs.4,00/- p.m. After making deduction of Rs.150/- towards personal expenditure, remaining amount has been multiplied by twelve, thereafter by fifteen, looking to the age of the deceased (35), therefore, amount assessed is just and reasonable, added by other amounts towards medical expenditures, transportation and nutrition.

4. No other point was urged.

5. Consequently, appeal is allowed, award of the Motor Accident Claims Tribunal is set aside to the extent that the appellant is not liable for the accident. Sole liability therefore is that of the tractor -cum-trailer driver and

compensation is payable by the United India Assurance Company with which the tractor-cum-trailer was insured.

6. Compensation be paid within two months and if any amount is lying in deposit with the Claims Tribunal, same be released in favour of the claimants. Cost of this Court on parties.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

(sunil)